

Amendments on the Communiqué on Principles Regarding Real Estate Investment Funds

July 2024



Dear Clients, Colleagues and Friends,

The Communiqué Amending the Communiqué on Principles Regarding Real Estate Investment Funds (III-52.3) (“**Amendment Communiqué**”) has been published in the Official Gazette dated 17 July 2024 and numbered 32604 and entered into force on the same date. With this awaited amendment, various articles of the Communiqué on Principles Regarding Real Estate Investment Funds (III-52.3) (“**Communiqué**”) have been amended in order to allow real estate investment funds (“**REIF**”) to invest in real estate projects where more than half of the total gross area of the independent sections is allocated for residential use in order to contribute to housing production and to simplify and more effectively carry out the application processes of REIFs.

The main amendments and innovations introduced by the Amendment Communiqué regarding REIFs have been summarized below.

1) Investments in real estate projects by REIFs

The most significant innovation introduced by the Amendment Communiqué is that REIFs are allowed to invest exclusively in real estate projects where it is determined by a report to be prepared by independent real estate appraisal institutions that more than half of the total gross area of the independent sections is reserved for residential use. It is also stipulated that the following principles shall b to the funds to be established in this manner:

- Including the phrase “project real estate investment fund” in the titles of the REIFs to be established;
- The REIF portfolio may only consist of (i) land plots and real estate projects on which projects will be developed and (ii) participation shares of investment funds with short-term or money market in their titles, reverse repos, lease certificates issued by the Treasury Asset Leasing Company of Turkish Ministry of Treasury and Finance, public debt instruments, time deposits and participation accounts;
- With the Amendment Communiqué, project real estate investment funds will not be subject to the following conditions as stipulated for existing REIFs: (i) at least 80% of the total value of the fund must be composed of real estate investments; and (ii) the portfolio limitation on investing in the shares of joint stock companies, which consist of domestic real estate investments at least 75% of the total

assets in their financial statements, up to a maximum of 20% of the total value of the fund shall not be applied;

- Cash in the portfolio, can only be invested in participation shares of investment funds with short-term or money market in their titles, reverse repo, lease certificates issued by the Treasury Asset Leasing Company of Turkish Ministry of Treasury and Finance, public debt instruments, time deposits and participation accounts;
- Project real estate investment funds may include in their portfolios real estate projects realized on land owned by the public or other persons with whom they have entered into revenue sharing or land sale in return for flats agreements, as well as land owned by them, and may establish right of superficies or invest in real estate projects by purchasing independent residential units from ongoing projects;
- All legal requirements must be fulfilled in order to start the construction of real estate projects that meet the conditions specified in the Communiqué within 3 years at the latest on the lands registered in the name of the fund in the title deed on behalf of the project real estate investment funds;
- The rights arising from revenue sharing agreements to which project real estate investment funds will be a party, except in cases where the counterparty of the agreement is Türkiye Cumhuriyeti Ziraat Bankası Anonim Şirketi, Türkiye Halk Bankası Anonim Şirketi ve Türkiye Emlak Bankası Anonim Şirketi, Türkiye Vakıflar Bankası Türk Anonim Ortaklığı, Savings Deposit Insurance Fund, Housing Development Administration, İller Bankası A.Ş., municipalities and their subsidiaries, affiliates and/or companies in which there are privileges to nominate candidates for the board of directors, and in case the collateral is to be given as mortgage, guarantee or surety, the founder himself/herself is responsible for determining that such collaterals are of a quality to protect the rights of the REIF;
- All legal permits for the projects to be included in the portfolio must have been obtained, the project must be ready and approved, all documents legally required for the commencement of construction must be provided in full and accurately, and this situation must have been determined by independent real estate appraisal institutions; Additionally, the project must be collateralized by building completion insurance, bank letter of guarantee, progress payment system or at least one of the methods deemed appropriate by the Capital Markets Board (*For the rights arising from revenue sharing contracts to which project real estate investment funds will be a party, the collateral requirement specified in this article shall not be required in cases where the counterparty of the contract is Türkiye Cumhuriyeti Ziraat Bankası Anonim Şirketi, Türkiye Halk Bankası Anonim Şirketi ve Türkiye Emlak Bankası Anonim Şirketi, Türkiye Vakıflar Bankası Türk Anonim Ortaklığı, Savings Deposit Insurance Fund, Housing Development Administration, İller Bankası A.Ş., municipalities and their subsidiaries, affiliates and/or companies in which there are privileges to nominate candidates for the board of directors.*);
- All kinds of construction work and manufacturing, drilling, installation, alteration, improvement, renovation, development, assembly and similar construction works related to the real estate projects to be included in the portfolio will be required to be carried out by contractors within the scope of an agreement that includes the mutual rights and obligations of the parties arising from the construction works;
- The contractor who will carry out construction works related to real estate projects must have a group A or B contractor authorization certificate as defined in the “Regulation on Classification and Registration of Building Contractors” published in the Official Gazette dated 2/3/2019 and numbered 30702; and
- The sale and return of participation shares in return for the assets that may be included in the portfolio may be realized in kind within the framework of the provisions of the Communiqué.

2) REIFs can be issued under an umbrella fund like securities investment funds,

The Amendment Communiqué paves the way for the establishment of REIFs as umbrella funds, as is the case with securities investment funds. Thus, without creating a separate bylaw for each REIF to be established, the participation shares of the newly established REIF can be issued under a single bylaw, on condition that a separate issuance document is issued under the umbrella fund.

3) Fund Issuance Agreement

With the Amendment Communiqué, the fund issuance agreement to be concluded individually or collectively between the REIF and the investors has been regulated and thus, within the scope of simplifying the issuance document, some of the elements in the issuance document have been reflected in the fund issuance agreement in order to continue informing the investors.

It is regulated that a fund issuance agreement containing the minimum elements specified in the Communiqué shall be signed with the investors prior to the sale of the participation shares of the REIF to qualified investors and a copy of this agreement shall be published on the Public Disclosure Platform page of the relevant fund.

4) Provisional Article

Pursuant to the provisional article 2 added to the Communiqué;

As of 17 July 2024, when the Amendment Communiqué entered into force, the existing applications that have not been decided by the Capital Markets Board will be finalized through taking into consideration the amendments entered into force with the Amendment Communiqué.

Pursuant to the aforementioned provision, the founders of the funds that have issued fund units as of the effective date of the Amendment Communiqué and whose portfolio is suitable for project real estate investment funds may apply to the Capital Markets Board within one month at the latest as of the effective date of the Amendment Communiqué with a request to amend the information document in order to include the term "project" in the title of the relevant fund, provided that it is declared that a fund issuance agreement has been signed with all fund unit holders.

As of the effective date of the Amendment Communiqué, funds that have issued fund units have been given until 31 December 2024 to sign a fund issuance agreement with investors and to comply with the minimum elements required to be included in the fund's issuance document. The deadline may be extended up to six months if there are reasonable grounds deemed appropriate by the Capital Markets Board.

5) Conclusion

With the Amendment Communiqué, a new era has begun for funds. Project real estate investment funds are expected to contribute to increasing supply and to become an attractive investment instrument for investors seeking potentially high returns in the real estate market and preferring to invest in specific projects.



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